



Fast Track Proposed Regulation Agency Background Document

Agency name	State Air Pollution Control Board
Virginia Administrative Code (VAC) citation	Primary action: 9VAC5 Chapter 150, Regulation for Transportation Conformity
Regulation title	Regulation for Transportation Conformity
Action title	Repeal of Chapter 150 Regulation for Transportation Conformity (Revision G11)
Date this document prepared	September 11, 2011

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes.

The Regulation for Transportation Conformity (9VAC5-150) requires that transportation plans, programs, and projects conform to state air quality requirements and federal requirements established under § 176(c) of the federal Clean Air Act. The regulation establishes the criteria and procedures for ensuring that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The department proposes to repeal 9VAC5 Chapter 150, Regulation for Transportation Conformity in its entirety because a new Regulation for Transportation Conformity (9VAC5 Chapter 151) has been adopted, is effective, and is the only transportation conformity regulation that meets all state and federal statutory and regulatory requirements.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

On September 9, 2011, the State Air Pollution Control Board:

1. Authorized the department to promulgate the attached proposal for public comment using the fast-track process established in § 2.2-4012.1 of the Administrative Process Act for regulations expected to be non-controversial. The Board's authorization constituted its adoption of the regulation at the end of the public comment period provided that (i) no objection to use of the fast-track process is received from 10 or more persons, or any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, and (ii) the Department does not find it necessary, based on public comments or for any other reason, to make any changes to the proposal.
2. Authorized the Department to set an effective date 15 days after close of the 30-day public comment period provided (i) the proposal completes the fast-track rulemaking process as provided in § 2.2-4012.1 of the Administrative Process Act and (ii) the Department does not find it necessary to make any changes to the proposal.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including General Assembly chapter numbers, if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the scope of the legal authority and the extent to which the authority is mandatory or discretionary.

Section 10.1-1308 of the Virginia Air Pollution Control Law (Title 10.1, Chapter 13 of the Code of Virginia) authorizes the State Air Pollution Control Board to promulgate regulations abating, controlling and prohibiting air pollution in order to protect public health and welfare. Written assurance from the Office of the Attorney General that the State Air Pollution Control Board possesses the statutory authority to promulgate the proposed regulation amendments is available upon request.

Promulgating Entity

The promulgating entity for this regulation is the State Air Pollution Control Board.

Federal Requirements

Section 176 of the Clean Air Act requires that transportation plans, programs and projects which are funded or approved under Title 23 U.S.C. or the Federal Transit Act conform with state or federal air quality implementation plans.

Section 176(c)(1) of the Act states, "No department, agency, or instrumentality of the Federal Government shall engage in, support in any way or provide financial assistance for, license or permit, or approve, any activity which does not conform to a [State Implementation Plan]." This requires metropolitan planning organizations (MPOs) and the United States Department of Transportation (DOT) to make determinations that federally-funded transportation plans, programs, and projects conform with Virginia's SIP. "Conformity" means that the activity conforms to the SIP's purpose of eliminating or reducing the severity and number of violations of the NAAQS and achieving expeditious attainment of such standards, and will not (i) cause or contribute to any new violation of any standard in any area, (ii) increase the frequency or severity of any existing violation of any standard in any area, or (iii) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.

The Act ties conformity to attainment and maintenance of the NAAQS. Section 176(c)(2) requires that a transportation activity must not adversely affect implementation of the SIP or the timely attainment and maintenance of the NAAQS. The Act emphasizes reconciling the emissions from transportation activities with the SIP rather than simply providing for the implementation of SIP measures. This integration of

transportation activities and air quality planning is intended to protect the integrity of the SIP by helping to ensure that SIP emissions growth projections are not exceeded, emissions reduction targets are met, and maintenance efforts are not undermined.

Section 176(c)(4)(A) and (B) requires EPA to promulgate criteria and procedures for demonstrating and assuring conformity of federal actions to a SIP. Section 176(c)(4)(C) then requires states to submit a SIP revision containing the criteria and procedures.

40 CFR Part 51 subpart T establishes the criteria and procedures governing the determination of conformity for all federally-funded transportation plans, programs, and projects in nonattainment and maintenance areas for states with a federally-approved SIP that establishes conformity criteria and procedures consistent with the transportation conformity regulation promulgated by EPA.

40 CFR Part 93, Subpart A establishes the criteria and procedures governing the determination of conformity for all federally-funded transportation plans, programs, and projects in nonattainment and maintenance areas for states without an federally approved SIP revision that establishes conformity criteria and procedures consistent with the transportation conformity regulation promulgated by EPA.

State Requirements

Code of Virginia § 10.1-1300 defines pollution as "the presence in the outdoor atmosphere of one or more substances which are or may be harmful or injurious to human health, welfare or safety, to animal or plant life, or to property, or which unreasonably interfere with the enjoyment by the people of life or property." Excess emissions from mobile sources are harmful to human health and can significantly interfere with the people's enjoyment of life and property.

Code of Virginia § 10.1-1307 provides that the board may, among other activities, develop a comprehensive program for the study, abatement, and control of all sources of air pollution in the Commonwealth.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The purpose of the transportation conformity regulation is to establish criteria and procedures for the transportation planning organization to determine whether federally-funded transportation plans, programs, and projects are in conformance with state plans for attaining and maintaining the health-based ambient air quality standards in the Northern Virginia, Richmond, and Hampton Roads areas. The transportation conformity regulation ensures that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

9VAC5 Chapter 150 was adopted on August 31, 1996 to meet the requirements of § 176 of the Clean Air Act and 40 CFR Part 51 subpart T. However, EPA never approved Chapter 150, so all transportation conformity determinations continued to be made in accordance with the federal requirements of 40 CFR Part 93, Subpart A. In the absence of federal approval of Chapter 150, the board adopted a new Regulation for Transportation Conformity, Chapter 151 on March 26, 2007, which incorporated the requirements of 40 CFR Part 93, Subpart A. The new Chapter 151 became effective on May 31, 2007 and was approved by EPA on November 20, 2009 (74 FR 60194).

The requirements of 9VAC5 Chapters 150 and 151 differ in many respects, and only Chapter 151 meets all of the federal statutory and regulatory requirements for transportation conformity and is therefore essential to protect the health and welfare of the public. In order for the state regulations to be administratively correct and for Chapter 151 to effectively and efficiently protect public health and welfare, 9VAC5 Chapter 150 must be repealed.

Rationale for using fast track process

Please explain the rationale for using the fast track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

Please note: If an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall (1) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

9VAC5 Chapter 150 can't be used for transportation conformity determinations because it lacks federal approval. There is an effective Regulation for Transportation Conformity in 9VAC5 Chapter 151 that has been federally approved. There is a very limited stakeholder group that is affected by transportation conformity regulations and the Chapter 151 transportation conformity determination process has federal and state-specific stakeholder consultation provisions within the regulation. Therefore, no objections to the repeal of 9VAC5 Chapter 150 transportation conformity requirements are anticipated and the fast-track process is appropriate.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.)

9VAC5 Chapter 150 Regulation for Transportation Conformity is repealed in its entirety: the definitions; the applicability, consultation, relationship, review and exemption provisions; and all of the criteria and procedures for planning, making, implementing, and enforcing transportation conformity. The provisions of 9VAC5 Chapter 151 Regulation for Transportation Conformity are not affected by this amendment.

Issues

Please identify the issues associated with the proposed regulatory action, including: (1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; (2) the primary advantages and disadvantages to the agency or the Commonwealth; and (3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please indicate.

1. Public: The primary advantage to the public is the removal of unusable and conflicting regulatory requirements, which improves the public's ability to understand and comply with regulatory requirements. There are no disadvantages to the public.
2. Department: The primary advantage to the department is the removal of regulations that are no longer necessary. There are no disadvantages to the department.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

The proposed regulation amendments to repeal 9VAC5 Chapter 150 Regulation for Transportation Conformity are not more restrictive than the applicable legal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

There is no locality which will bear any identified disproportionate material air quality impact due to the proposed regulation which would not be experienced by other localities.

Public participation

Please include a statement that in addition to any other comments on the regulation, the agency is seeking comments on the costs and benefits of the proposal, the potential impacts on the regulated community, and the impacts of the regulation on farm or forest land preservation.

In addition to any other comments, the Department is seeking comments on the costs and benefits of the proposal, the impacts on the regulated community, and impacts of the regulation on farm or forest land preservation. Also, the Department is seeking information on impacts to small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include (1) projected reporting, recordkeeping and other administrative costs, (2) probable effect of the proposal on affected small businesses, and (3) description of less intrusive or costly alternative methods of achieving the purpose of the proposal.

Anyone wishing to submit written comments may do so by mail, email, or fax to the staff contact listed below. Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at www.townhall.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by the last day of the public comment period. Commenters submitting faxes are encouraged to provide the signed original by postal mail within one week.

All comments requested by this document must be submitted to the agency contact: Gary Graham, Regulatory Analyst, Office of Regulatory Affairs, Department of Environmental Quality, P.O. Box 1105, Richmond, Virginia, 23218 (email gary.graham@deq.virginia.gov, fax 804-698-4510).

Regulatory flexibility analysis

Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: (1) the establishment of less stringent compliance or reporting requirements; (2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; (3) the consolidation or simplification of compliance or reporting requirements; (4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and (5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

An analysis of the proposal was completed for alternative regulatory methods that will minimize the adverse impact on small businesses without compromising health, safety, environmental and economic welfare.

With the repeal of 9VAC5 Chapter 150, Chapter 151 still meets all of the minimum requirements of the federal Clean Air Act and the minimum requirements of 40 CFR Part 93, and does not differ materially from the pertinent EPA regulations. A failure to repeal any portion of 9VAC5 Chapter 150 could lead to confusion on the part of regulated agencies, planning groups, and communities and would compromise the effectiveness of the new Chapter 151 requirements in protecting the health and welfare of the public.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures.	It is not expected that the repeal of this regulation will result in any cost to the Department.
Projected cost of the new regulations or changes to existing regulations on localities.	There are no projected costs to localities resulting from the repeal of this regulation.
Description of the individuals, businesses or other entities likely to be affected by the new regulations or changes to existing regulations.	The entities that could be affected by the repeal of this regulation are limited to local planning organizations that deal with transportation projects and the state and federal transportation agencies.
Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	There are five local planning organizations, one state agency, and one federal agency that might have an interest in the repeal of this regulation, but none would be affected in any significant way because the regulation is not in use.
All projected costs of the new regulations or	Because the regulation is not in use, there are no

<p>changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. Specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</p>	<p>projected costs of any kind to any individual, business or other entity resulting from the repeal of this regulation.</p>
--	--

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

Alternatives to the proposed regulation amendments were considered by the Department. The Department determined that the first alternative is appropriate, as it is the least burdensome and least intrusive alternative that fully meets the purpose of the regulation. The alternatives considered by the Department, along with the reasoning by which the Department has rejected any of the alternatives being considered, are discussed below.

1. Repeal 9VAC5 Chapter 150 Regulation for Transportation Conformity and thereby satisfy the provisions of the law and associated regulations and policies. This option was chosen because it makes the state regulations administratively correct and it meets the purpose of the regulation: to effectively and efficiently protect public health and welfare,
2. Make alternative regulatory changes to those required by the provisions of the law and associated regulations and policies. This option was not chosen because it would conflict with the effective transportation conformity requirements in 9VAC5 Chapter 151.
3. Take no action to amend the regulations and continue to keep the 9VAC5 Chapter 150 requirements effective. This option was not chosen because Chapter 150 does not meet the Clean Air Act § 176 requirements for transportation conformity.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: (1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; (2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; (3) strengthen or erode the marital commitment; and (4) increase or decrease disposable family income.

It is not anticipated that these regulation amendments will have a direct impact on families.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the difference between the requirements of the new provisions and the current practice or if applicable, the requirements of other existing regulations in place.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all provisions of the new regulation or changes made to existing regulations between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
9VAC5 Chapter 150, Part I General Definitions.			
150-10		General information, such as meanings for defined and undefined terms.	Repeal. This provision is not in use and was replaced by 9VAC5-151-10 A and B.
150-20		Definitions.	Repeal. This provision is not in use and was replaced by 9VAC5-151-10 C and 61.
9VAC5 Chapter 150, Part II General Provisions.			
150-30		Applicability.	Repeal. This provision is not in use and was replaced by 9VAC5-151-20.
150-40		Authority of board and DEQ.	Repeal. This provision is not in use and was replaced by 9VAC5-151-30.
150-80		Relationship of state regulations to federal regulations.	Repeal. This provision is not in use and was replaced by 9VAC5-151-20.
150-110		Priorities.	Repeal. This provision is not in use and was replaced by 9VAC5-151-40, 50 and 61.
150-120		Frequency of conformity determinations.	Repeal. This provision is not in use and was replaced by 9VAC5-151-40, 50 and 61.
150-130		Consultation.	Repeal. This provision is not in use and was replaced by 9VAC5-151-50 and 70.
150-140		Content of transportation plans.	Repeal. This provision is not in use and was replaced by 9VAC5-151-40, 50 and 61.
150-150		Relationship of transportation plan and TIP conformity with the NEPA process.	Repeal. This provision is not in use and was replaced by 9VAC5-151-40, 50 and 61.
150-160		Fiscal constraints for transportation plans and TIPs.	Repeal. This provision is not in use and was replaced by y 9VAC5-151-40, 50 and 61.
150-170		General criteria and procedures for determining conformity of transportation plans, programs, and projects.	Repeal. This provision is not in use and was replaced by 9VAC5-151-40, 50 and 61.
150-180		Criteria and procedures for the latest planning assumptions.	Repeal. This provision is not in use and was replaced by 9VAC5-151-40, 50 and 61.
150-190		Criteria and procedures for	Repeal. This provision is not in use and was

		the latest emissions model.	replaced by 9VAC5-151-40, 50 and 61.
150-200		Criteria and procedures for consultation.	Repeal. This provision is not in use and was replaced by 9VAC5-151-40, 50 and 61.
150-210		Criteria and procedures for the timely implementation of TCMs.	Repeal. This provision is not in use and was replaced by 9VAC5-151-40, 50 and 61.
150-220		Criteria and procedures for currently conforming transportation plans and TIPs.	Repeal. This provision is not in use and was replaced by 9VAC5-151-40, 50 and 61.
150-230		Criteria and procedures for projects from a plan and TIP.	Repeal. This provision is not in use and was replaced by 9VAC5-151-40, 50 and 61.
150-240		Criteria and procedures for localized CO and PM ₁₀ violations (hot spots).	Repeal. This provision is not in use and was replaced by 9VAC5-151-40, 50 and 61.
150-250		Criteria and procedures for compliance with PM ₁₀ control measures.	Repeal. This provision is not in use and was replaced by 9VAC5-151-40, 50 and 61.
150-260		Criteria and procedures for the motor vehicle emissions budget (transportation plan).	Repeal. This provision is not in use and was replaced by 9VAC5-151-40, 50 and 61.
150-270		Criteria and procedures for the motor vehicle emissions budget (TIP).	Repeal. This provision is not in use and was replaced by 9VAC5-151-40, 50 and 61.
150-280		Criteria and procedures for motor vehicle emissions budget (project not from a plan and TIP).	Repeal. This provision is not in use and was replaced by 9VAC5-151-40, 50 and 61.
150-290		Criteria and procedures for localized CO violations (hot spots) in the interim period.	Repeal. This provision is not in use and was replaced by 9VAC5-151-40, 50 and 61.
150-300		Criteria and procedures for interim period reductions in ozone and CO areas (transportation plan).	Repeal. This provision is not in use and was replaced by 9VAC5-151-40, 50 and 61.
150-310		Criteria and procedures for interim period reductions in ozone and CO areas (TIP).	Repeal. This provision is not in use and was replaced by 9VAC5-151-40, 50 and 61.
150-320		Criteria and procedures for interim period reductions for ozone and CO areas (project not from a plan and TIP).	Repeal. This provision is not in use and was replaced by 9VAC5-151-40, 50 and 61.
150-330		Criteria and procedures for interim period reductions for PM ₁₀ and NO ₂ areas (transportation plan).	Repeal. This provision is not in use and was replaced by 9VAC5-151-40, 50 and 61.
150-340		Criteria and procedures for interim period reductions for PM ₁₀ and NO ₂ areas (TIP).	Repeal. This provision is not in use and was replaced by 9VAC5-151-40, 50 and 61.
150-350		Criteria and procedures for interim period reductions for PM ₁₀ and NO ₂ areas (project not from a plan and TIP).	Repeal. This provision is not in use and was replaced by 9VAC5-151-40, 50 and 61.
150-360		Requirements for the	Repeal. This provision is not in use and was

		transition from the interim period to the control strategy period.	replaced by 9VAC5-151-40, 50 and 61.
150-370		Requirements for adoption or approval of projects by recipients of funds designated under title 23 U.S.C. or the Federal Transit Act.	Repeal. This provision is not in use and was replaced by 9VAC5-151-40, 50 and 61.
150-380		Procedures for determining regional transportation-related emissions.	Repeal. This provision is not in use and was replaced by 9VAC5-151-40, 50 and 61.
150-390		Procedures for determining localized CO and PM ₁₀ concentrations (hot-spot analysis).	Repeal. This provision is not in use and was replaced by 9VAC5-151-40, 50 and 61.
150-400		Requirements for using the motor vehicle emissions budget in the applicable implementation plan.	Repeal. This provision is not in use and was replaced by 9VAC5-151-40, 50 and 61.
150-410		Requirements for the enforceability of design concept and scope and project-level mitigation and control measures.	Repeal. This provision is not in use and was replaced by 9VAC5-151-40, 50 and 61.
150-420		Description of exempt projects.	Repeal. This provision is not in use and was replaced by 9VAC5-151-40, 50 and 61.
150-430		Description of projects exempt from regional emissions analyses.	Repeal. This provision is not in use and was replaced by 9VAC5-151-40, 50 and 61.
150-440		Special provisions for nonattainment areas which are not required to demonstrate reasonable further progress and attainment.	Repeal. This provision is not in use and was replaced by 9VAC5-151-40, 50 and 61.
150-450		Requirement for chapter review and board confirmation.	Repeal. The requirement has past its due date and the requirement is no longer applicable.

TEMPLATES\FAST TRACK\TH04
REG\DEV\G11-04TF